

# **Administrative Remedies for Government Abuses**

**Policy research paper and policy recommendations**

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# **Administrative Remedies for Government Abuses**

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### **1.0. Introduction**

Observations by scholars, local and international NGOs, media publications, surveys and statements by politicians reveal that abuses of government at national and local levels are widespread and in some extent out of control. This happens because of a number of reasons, including:

- 1) inadequacy and inefficiency of existing legislation, failure of it's enforcement,
- 2) historical and cultural factors, and inexperience of the public sector as people's servant,
- 3) lack of experience and absence of culture of judicial appeals by citizens / civil society challenging abusive administrative acts (though, recent enactment by the Parliament of the legislation about administrative courts, effective June 1, 2004, is a very positive step providing that complainers will effectively use new legislation as a tool),
- 4) poor citizens participation in administrative decision-making due to lack of formal and informal mechanisms for such participation.

Abuse of official position creates distrust in government, disinterest in politics among the citizenry and even perception of corrupt government. The need for reforms in the public sector and enforcement mechanisms for related legislation is recognized both within the government and by the public. Policy research in this area and development of recommendations for changes is clearly on the public agenda, and will contribute to the restoration of people's trust in government.

The objective of the research was to study abuses at the local government level ***due to the lack of administrative remedies in cases of abuses of power*** and develop policy recommendations on administrative remedies for reducing of abuses.

Government abuses at the local levels are wide spread according to different surveys and opinion polls conducted in the last few years. According to the “Comparative survey of Democratization and Value Changes, Country Survey Report: Mongolia” [1] the degree of people’s trust in Local Government was rated less than 50%. The same survey shows that corruption is more widespread at local levels of government than at the national level.

The working hypothesis of the research was defined as follows:

***“Introduction of efficient administrative remedies in cases of abuse of power will reduce abuse of government, and consequently contribute to the restoration of people’s trust in government”.***

### **Comparative studies**

International experience shows that problems we are facing in Mongolia are similar to those in the post-communist countries.

According to an opinion poll concerning public perceptions of accountable government carried out by the Romanian Academic Society in Slovakia, Bulgaria and Romania, low public trust in the state administration correlates with low “civic competence” and “insufficient participation on the part of the governed.” According to the survey, 33.8%, of Romanian, 18.4% of Bulgarian and 34.2% of Slovak respondents believe that “Civil servants and/or local government work in the public interest”. In the same poll, when asked their reaction to mistreatment by a civil servant, a significant number of Romanians said they “offer him/her something for fairer treatment” (23.0%) while significant numbers of Bulgarians and Slovaks said they would “complain to the proper authorities” (25.4% and 35.2%). But the largest group in all three countries said they would “let it rest” (39.3%, 40.4% and 41.7%). In sum, the surveyors conclude, one of the key underlying problems in governance is the low “civic competence” among the governed.[2]

An essential problem in improving good governance and reducing corruption in Eastern Europe and Russia is the difficulty in overcoming the inertia of a deeply ingrained, inward looking and politicized sense of responsibility among civil servants. Another essential problem, which is both a product of—and contributor to—the first problem, is the low “civic competence” of the general public, generated in large part by low expectations.

One way out of this vicious circle would be to strengthen the remedies available to the governed and to encourage their use, gradually building up the public trust essential to a well-functioning system of governance.

There are sometimes quite pessimistic views on government abuse. “Abusive treatment by the various state administrations is not universal. It is simply arbitrary and unpredictable...One never knows what treatment to expect from an administration; usually it turns out badly if you do not have a personal connection, and a bribe will be required. But even a bribe does not ensure that the services sought

will be made available. Then again, it may work even without bribing, if you are lucky. The state of affairs is like the weather or God's will: one never knows where one stands. And arbitrariness gives the civil servant power over the citizen, even more so than in communist times." (Alina Mungiu-Pippidi, "Culture of Corruption or Accountability Deficit?" *East European Constitutional Review*, Fall 2002/Winter 2003. p. 83.)

In some countries, the administrative structure of the government has prevented local councils from obtaining truly independent standing as governing and decision-making bodies. Georgian legislation is ambiguous concerning the roles of different levels of government, allowing for substantial overlaps in authority and functions. In turn, local governments lack the resources and capacity to respond to widely recognized demands and preferences of the local population. This is very true also for Mongolia, where centralization is still strong and local governments have miserable subsidies.

Studies have evidenced that corruption undermines the institutional and procedural foundations upon which accountability mechanisms lie, and in many ways governs the informal relationships that currently exist between various institutions at the local level. Interestingly, high tolerance of corruption, coupled with a lack of administrative remedies to keep local institutions accountable, transparent, and responsive, have generated a strong sense of impunity among local officials. This fuels growing distrust and nihilism toward local institutions.

### **1.1. Definition of Administrative Abuse**

In order to deal with government abuses there needs to be a working definition of "administrative abuse". Definition used in the article "Trust Government: Administrative Remedies for Administrative Ills" [2] provide that,

**Administrative abuse is:**

- **an act of enforcement,**
- **promulgation of a norm,**
- **taking of a decision, or**
- **denial of a benefit,**

**by a state official, which is:**

- **illegal,**
- **a result of inappropriate exercise of discretion, or**
- **procedurally improper, irregular or erroneous.**

The publication further states, that "within the context of formal and informal rule-making (promulgation of normative acts as well as issuing of less formal guidance), an expansive definition of administrative abuse would further define "procedurally proper" to always require a transparent and open process involving public participation".

Administrative abuses can include actions which are illegal (such as taking a bribe), violate normal procedures (such as the preferential processing of paperwork) or which involve the inappropriate exercise of discretion (based on, for example, nepotism, cronyism, partisan politics or discrimination).

In addition to above, laws and regulations contain a term “failure of taking an action” meaning absence of appropriate action that leads to non-fulfillment of legitimate rights of citizens.

## **1.2. Research methodology**

***Areas of government abuse chosen for the research were political patronage and nepotism. This types of abuse are most harmful since they lay ground and become soil for corruption and impunity.***

***Note:*** Government abuse in favor of the political party and elections were excluded on the ground that separate research on that topic was included in the Policy Fellowship Program of the Open Society Forum Mongolia.

Research methodology was designed with consideration of objective and subjective difficulties related to the topic of the research, i.e. little or no official records of government abuses by the government itself, reluctance of government officials to provide relevant information during interviews or reference to the state secrecy law, that provides high degree of non-disclosure for documents of government agencies. In almost all cases when talking about particular cases of abuses with the people currently employed at the local governments, they wanted not to be identified. On the other hand media publications, NGO sources, anecdotal evidence although providing fair quantity of information they are usually lacking credibility. Nonetheless following units of analysis were used: government officials at the local level, public servants at the local level, general public (especially those who were affected by consequences of abuses), non-government organizations and private business community.

Case studies involved local government offices and agencies and cover period of time starting June 1, 2003 through June 1, 2004. Geographic area covered Bayangol district of Ulaanbaatar, city of Darkhan and Ovorkhangai aimag (province).

Data surveyed was quantitative, such as survey analysis and statistics of complaints, publications, government decrees, cases of violations of public service law. And qualitative: laws and regulations, case study, interviews, content-analysis of the media.

Data collection involved data that already have been collected and new data gathered from variety of sources available from centralized sources (such as Parliament, Government, NGOs, research institutions) and documents and facts obtained during field trips from local governments and groups and individuals.

About 90 people from above mentioned locations were interviewed. Government officials included aimag governors and officials in charge of citizen's complaints,

human resources employees and other staff of local government offices. Researcher met and talked to representatives of political parties and local NGOs, local business community.

## **2.0. Types of government abuse**

When government abuse happens? Examples could be: Local government official investigating the health and safety standards in restaurants uses his/her discretionary power to threaten owners to close down or suspend operation of their premises. This happens frequently in restaurants, cafeterias and bars in the districts of Ulaanbaatar and provinces. Other forms of abuse of power is, for example, when some company owners use influence or bribery to induce civil servants to investigate a competing restaurant/bar for a violation of health and safety standards, or in the context of tax administration, to audit the accounts of a competing company. In some instances, initiating an investigation is also the product of partisan politics. Government agencies investigate the financial dealings of particular companies because of their formal or informal affiliation with opposition political formations rather than for politically neutral reasons. There are cases when authorities initiate investigations of NGOs motivated by a perception that they are working in opposition to the government.

When conducting this research, initial survey of documents and interviews revealed wide range of areas of the local government activities where abuses could be identified in accordance with the definition given earlier. By analyzing different types of abuses researcher identified following two areas;

- 1. Political patronage when appointing and recruiting for government jobs.**
- 2. Nepotism in the government service.**

**Above areas of government abuse are most important to study in order to provide remedies because political patronage and nepotism create soil for corruption and impunity, “circle of silence”.**

### **2.1. Political patronage when appointing and recruiting for government jobs**

Government appointments in Mongolia are regulated by law and in general could be divided into two groups: political appointees and government employees. Almost all of the political appointees relate to the central government, such as ministries and agencies. At the local executive level aimag /duureg (provincial/district) and soum/horoo (sub-province/sub-district) governors are semi-elected-appointed (after being elected by local hurals (councils) those positions require approval of higher level authorities). All remaining staff at the local government is appointed by the decree of the governor or the head of the chancellery. [3] .

History of elections in Mongolia shows that every new Government both at the central and local level is characterized with mass firings based on political affiliation. Vacancies then are filled with people who are members of the ruling party or those who are loyal to the party.

One important guarantee of the right to freely associate is the constitutional provision forbidding discrimination against a person based on his or her affiliation or membership in a party or other civic organization. Accordingly, legislation on public service prohibits this kind of discrimination.

However, in recent years there have been many cases of dismissal or failure to hire persons by reason of overt or covert discrimination on the basis of party affiliation. There has been a rising number of large-scale lay-offs of civil servants, particularly following the last two /1996 and 2000/ parliamentary and local legislature elections.

Although these trends are not openly precipitated by official decisions of the leadership, the research documenting these cases calls for serious attention.

According to the report of the Public Service Council, “the two elections since 1996 led to an abrupt shift of power from one political coalition to another and many changes in government, which has had a highly negative effect on public servants.”

The number of people who have been fired from work due to discrimination on the basis of their party affiliation between 1992-2002 amounts to 850 in one aimag (Hovd).

The Public Service Council, an independent organization that reports to the State Great Khural, manages the standards of public service within its executive power. One of the functions of the Council is to monitor and resolve disputes involving an alleged violation of the rights of state administration employees. According to the Council, it received 165 complaints between July 1995 and June 2001 of unjustified lay-offs of state employees and unjustified refusal to hire persons who had passed the Public Service qualification exams. Of the complaints, the Council was able to reinstitute or provide with new jobs 56.3% of the plaintiffs (93 persons). In addition, the courts considered the cases of 9.7% of the plaintiffs (16 persons), who were reinstituted them in their previous jobs by court decision. [5]

According to political party officials number of people illegally discharged after Parliamentary and local elections vary between 30% - 60% at the local government level. Of all cases of firings only small percentage (less than 10%) of individuals filed formal complaints to Civil Service Council or to the courts. Survey and interviews revealed that reasons for hesitation of complaining are disbelief and distrust in fairness of mentioned institutions. Few cases dealt with in the Civil Service Council or courts and solved in favor of the complaints ended up in rehabilitation of civil servant, but after short period of time supervisors / higher ranking officials found new “reasons” for repeated discharge of the same individuals. Common practice is also so-called “structural change” when the former position of the discharged person is eliminated or renamed and this serves as a reason for refusal to re-hire the same person. Political party patronage is the strongest underlying base for government appointments and recruitment for government jobs. The system works from very top of the central government and goes down to lowest level of the local government.



Parliamentary website ([www.parl.gov.mn](http://www.parl.gov.mn)) hosts “Citizen opinion” page and several of opinions relate to the issue of political patronage when appointing and recruiting for government jobs. One of them (May 20, 2004, author didn’t give his/her identity) writes that after elections people are appointed to government positions without consideration of their skills and experience. Appointments go to those who have no ethics and lack ability to perform government service. Primary condition is loyalty to political party that won elections. He/she continues by saying that his/her previous remark about particular case was not answered and no action was undertaken to stop unfair practice.

When interviewing government officials in Drakhan, one of them said: “Corruption leads to the situation when business is done extra legally. For instance, at our organization two positions were granted to unqualified people who gave bribes, but not to those qualified. Legally there should be fair competition among best candidates for jobs. Now, best people and assigned jobs both suffer”. In this case we have direct bribe involved, but in number of other cases interviewers said that political patronage was main factor when hiring for government. With increased unemployment loyalty becomes not enough a condition and now media publications point out to facts when appointments are commonly accompanied by in advance payment in the form of campaign contributions or direct payments.

Political patronage can be seen even in the business sector. The political patronage in this area is most common in relation with government owned enterprises and government procurement. To give an example, copper mine “Erdenet”, a fully government owned company, is the largest business entity in Mongolia with annual revenues amounting to 35% of the state budget. About 60 small and medium size enterprises supply “Erdenet” with different kind of products and services. Almost all of them are chosen based on political party affiliation or loyalty of the owners of those business entities. Every time government changes all suppliers also change (D.Tsetsen “The Business News”, June 06-12, 2004. No.21(078). [6].

## **2.2. Nepotism**

Nepotism and political patronage are interwoven in the Mongolian society. Although no statistical data could be found on political party affiliation within the family members and relatives, but empirical experience show that majority of politically active population is characterized in general by family based loyalty to one particular political party.

Political patronage and nepotism involves different types of favoritism that is rooted in the Mongolian society. Political scientist D.Gankhuyag in his article “*Specific feature of Mongolia’s Social Relationship*” (Open Society Forum website: [www.forum.mn](http://www.forum.mn)) describes traditional roots favoritism in Mongolia as follows [7]:

*“Mongolians are much more dependent on each other than any other nation in the world. In other words, we are all brothers and sisters. It is reality and without considering this reality any plans for a change in the society are doomed to failure.*

*This reality does not fit any foreign theories and experiences. It is an outstanding phenomenon and the problems of our social life emanate from it.*

*The actors in Mongolian society are very closely related to each other, people-to-people relationship is predominantly based on ties of kinship, fellowship, place of origin and acquaintances. Mongolia is a country of relatives and acquaintances. Theoretically, that means that the pattern of Mongolia's social relationship at macro and micro levels is too close and interrelated. There are four categories of relationships.*

***Kinship relationship.*** *The kinship relationship between the members of a family being the core of the society plays a significant role. Between 1950 and 1970 when birth rates were high, a family on average had 4 children. In other words, one person had 4 brothers or sisters. When that person gets married the number of relatives increases two-fold adding. After marriage in big families the number of relatives reaches around 300-400 persons. If two such families unite they could form a political party /801 members are required to form a party/. Of course, this is an exaggeration.*

*This network of kinship relationship seems to prove the assertion that "there are elements of a tribal system in Mongolia" made by historian B. Bold. Mongolians tend liking relatives. It is not important whether it is "bad" or "good". But it is necessary to treat it as reality. This relationship is prone to affect other spheres of society such as political and economic fields.*

***School or class-mate relationship.*** *The traditional educational system in Mongolia was becoming unpopular and introduction of European educational system was a new phenomenon in social life at the beginning of the 20<sup>th</sup> Century. The establishment of a national educational network in Mongolia in 1950-1960 led to transformation of the traditional social relationship. The key element of this system was bringing up children within the community, say, at boarding schools which forms "one pot" psychology. To have a common ideology was also an important factor. When people live together for 8-10 years, attend same classes and eat from one pot that makes them uniform. When children reach the age of 18 they become life-long friends and brothers. Even later at work they cling to this community mentality. After school few of classmates continue to maintain regular contacts. The rest, though, without regular contacts stand ready to support and aid each other in case of need. This direct interrelationship is weaker in Ulaanbaatar and other cities. High-ranking people have a relationship originating from their degree study.*

***Professional or business relationship.*** *People get very close when they work together for many years. This kind of relationship is significant because of common ideology and uncompetitive atmosphere under socialism. An example, the Ministry of Foreign Affairs is much criticized for nepotism. For decades Mongolian diplomats were trained mainly in the former USSR Diplomatic Academy and the Institute of International Relations. It is natural that when X or Y becomes Foreign Minister he has to rely on this staff. The situation is same in other areas and the interrelationship of the leadership is a real thing.*

***Fellow relationship.** The Mongolians being herders have very strong feelings for the people of their native land. The people in rural and urban areas have had more or less constant relationship. This relationship is now evolving into a new business-like relationship. All Mongolians would rejoice when a wrestler from his native land wins or become nostalgic when he feels homesick. This relationship is likely to remain. The emergence of informal relationships like those of native land councils will certainly enhance this relationship.*

*The above-mentioned relationships do not just exist but interact in a way that could have strong impact on the society, individuals and family.*

*How do the Mongolians get their work done?*

*When Mongolians handle their private problems they do not think about relevant institutions or existing laws and regulations. They will first of all think about somebody who can deal with the problem. As a rule, they will seek such “an important” person among their relatives and friends. It is very good if that person is high-ranked. The theory of probability assumes with 50 per cent warrant that one would find his fellowman, classmate or relative as a doctor, judge, trader, driver, director or cashier. Sometimes it fails. Then he will inform his own circle about it and try to find the person from other circles. In this case his chances will reach 60-70 per cent. If he fails he will start another round of search. His chances will reach 90-100 per cent. Thus, Mongolians “complicate” things by not approaching the right person and this is regarded as almost natural.*

*This phenomenon called “bribery”, “back door” or “corruption” nowadays emanates from the social relationship and has a common root. Speaking in concrete terms, we do have corruption. Corruption is so evident as if it is on your palm. Though, we do not know the details, if one is aware of the “specific” relationship everything is clear.*

*It is important to know this specific feature of Mongolia’s social system, it is even more important if we understand these specifics. Foreigners hardly can understand this but we ourselves should understand this specific feature. This interrelationship among Mongolians is not necessarily of negative nature. It can have benefits, even more than we can imagine”.*

# # #

Above article sounds very compelling, though as mentioned earlier, when an issue of appointing or recruiting government employees for different positions, political party affiliation and loyalty to party leaders become the strongest argument. Favorable treatment by the party leadership is commonly based on long time loyalty, but according to gossips and numerous rumors published in the newspapers one can “buy” a position through large contributions to the political party and/or by bribing those leaders who have a power to appoint and recruit for government jobs.

### **3.0 Current Regulations**

If government appointments are heavily influenced by political patronage, what about legal requirements and employment standards.

When analyzing related legislation [4] (such as, Constitution of Mongolia, Labor Law, Public Service Law, Public Administration and Finance Law, Law about Local Administration), laws have rather general provisions (such as, education, profession, experience, knowledge, qualification) that can be interpreted subjectively, thus providing too much discretionary power for deciding who gets the job. And here comes the potential for abuse of power and corruption.

**Constitution of Mongolia, Article 14 (2)** says: “No person may be discriminated on the basis of ethnic origin, language, race, age, sex, social origin or status, property, occupation or post, religion, opinion, or education”.

**Labor Law** (from 1999), **Article 7.2** provides that “in the labor relations it shall be prohibited to discriminate on the grounds of ethnicity, social origin or status, race, sex, property, religion, opinion; or to create advantages”.

**Public Service Law** (from 2002), **Article 4.2.4** says: “Citizens shall have equal opportunities to enter the public service in accordance with the conditions and rules set by law”. Article 16.1 provides for non-discrimination on the grounds of ethnicity, social origin or status, race, sex, property, religion, opinion, **party or other non-government organization affiliation**.

**Law on Administrative and Territorial Units and Their Governance** (from 2002) declares in its **Article 5.1.3** that government employees shall be appointed through competitive process and on the ground of their knowledge, education, profession, experience, specification skills only, and their performance shall be evaluated realistically. The law prohibits groundless dismissal of an employee (**Article 14**)

**Criminal Code** contains number of provisions prohibiting employment discrimination, illegal dismissal of government employees, abuse of power.

**Article 134.1.** “Discrimination, persecution or obvious restriction of a citizen's right or legitimate interests for joining a political party or a non-governmental organization committed by an official shall be punishable by 250 to 350 hours of forced labor with deprivation of the right to hold specified positions or engage in specified business for a term of up to 3 years, incarceration for a term of more than 3 to 6 months or imprisonment for a term of up to 2 years.

**Article 272. Neglect of duties by a state official**

**272.1.** Omission or inadequate performance by an official of his/her official duties assigned by legislation and regulations enacted in conformity therewith that has caused a substantial damage shall be punishable by a fine equal to 5 to 50 amounts of minimum salary or by incarceration for a term of 1 to 3 months.

**272.2.** The same crime if it has caused a grave harm shall be punishable by imprisonment for a term of up to 3 years with or without deprivation of the right to hold specified positions or engage in specified business for a term of up to 2 years.

**Article 263. Abuse of power or of office by a state official**

**263. 1.** Abuse of power or of office by a state official, if it has been committed for lucrative or other personal interests and has caused a substantial damage to rights and interests of the citizens shall be punishable by a fine equal to 5 to 50 amounts of minimum salary with deprivation of the right to hold specified positions or engage in specified business for a term of up to 3 years or by incarceration for a term of 1 to 3 months.

**263.2.** The same crime committed repeatedly or if it has caused damage in a large amount shall be punishable by a fine equal to 51 to 100 amounts of minimum salary or imprisonment for a term of up to 5 years with deprivation of the right to hold specified positions or engage in specified business for a term of up to 5 years.

Note: State officials referred to in this chapter include the political, special, administrative and technical service civil servants.

**Article 264. Excess of authority by a state official**

**264.1.** Obvious excess by an official of the limits of rights and powers afforded to him/her by law, if it has caused a substantial damage to the rights and interests of a business entity, organization or citizens shall be punishable by a fine equal to 5 to 50 amounts of minimum salary with deprivation of the right to hold specified positions or engage in specified business for a term of up to 3 years, or by incarceration for a term of 1 to 3 months.

**264.2.** The same crime committed repeatedly, by use of violence or threat with such, or if it has caused damage in a large or an extremely large amount shall be punishable by a fine equal to 51 to 100 amounts of minimum salary, incarceration for a term of more than 3 to 6 months or imprisonment for a term of up to 5 years with deprivation of the right to hold specified positions or engage in specified business for a term of up to 5 years.

Some government positions require selection procedures, but they lack openness at one hand, and selecting bodies are not pluralistic.

Small scale local survey conducted in Ovorkhangai province [8] gives us some insight on corruption at the local level. Selected questions and answers are given below (*see Appendix 1 for full survey*).

In 2003 Citizen Information and Service center of the Ovorkhangai aimag's (province) Citizen's Representative Hural (local parliament) conducted survey on corruption. Survey was conducted in soums (administrative units) Arvaikheer, Uyanga, Nariinteel, Burd, Bayan-Ondor, Yosonzuil, Hujirt and Hairhandulaan of the Ovorkhangai aimag. Total of 285 respondents of different age, sex, education and employment from urban and rural area participated in the survey. Data is given below (*statistical errors and variations in transcription were left unchanged as they appear in the original document*).

From the survey researcher selected questions that directly or indirectly relate to the political patronage or nepotism.

**Causes of corruption**

Decline of morality	57	20%
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Decline of living standard	61	21.4%
<b>Weakness of law enforcement</b>	<b>78</b>	<b>27.3%</b>
<b>Officials are not held responsible</b>	<b>81</b>	<b>28.4%</b>

#### Is corruption related to politics?

<b>Yes</b>	<b>87</b>	<b>30.5%</b>
No	62	21.7%
Somewhat	44	15.4%
Mostly	45	15.7%
Don't know	31	10.8%

#### Who is most vulnerable to corruption?

<b>Those who have power</b>	<b>97</b>	<b>34%</b>
High ranking officials	35	12.3%
<b>Officials in-charge of certain issues</b>	<b>69</b>	<b>24.2%</b>
Politicians	17	5.9%

Besides political favoritism, nepotism is quite common at the local government level. Although Civil Service Law prohibits employment of relatives at the subordinate positions, at local government levels instances of employing even direct relatives are not rare. For example, in Ovorkhangai aimag provincial City Hall is called by the people as “Family Hall”.

Survey conducted by the “Zorig Foundation” [9] reveals high perception of nepotism in the government.

#### Evaluation of spreading of corruption (cumulative %)

	Very common	Common	rare	Not common at all
Invite officials for meals and give small gifts	56.9	37.1	5.6	0.4
<b>Officials provide jobs for relatives</b>	<b>58.7</b>	<b>33.3</b>	<b>6.7</b>	<b>1.3</b>
<b>Officials use their position for private gain</b>	<b>53.4</b>	<b>38.3</b>	<b>7.4</b>	<b>1.0</b>
Give officials things of big value	29.9	45.9	23.1	1.1
Give officials big amount of money	32.1	37.0	29.2	1.8
Government officials	25.1	28.7	40.6	5.6

engage with criminals				
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#### 4.0 Reasons why government abuses occur

When analyzing abuse of power there is general pattern why it happens.

##### 1. Inadequacy and inefficiency of existing legislation.

Laws and regulations, although they provide for government officials some degree of responsibility and accountability when exercising the power, but law provisions are mainly vague, have little details or leave space for unauthorized interpretations. Asian Development Bank (ADB) research concludes: “Mongolian laws tend to be general, descriptive and vague. Normally few, if any, definitions are given. The laws often create rights but not duties, leave the implementing agencies undefined, and fail to set out procedures” [10].

**Public Service Law** prohibits abuse of official authority (**provision 40.2.**). But the law does not define what types of abuse are meant. Another provision of the same law (**4.2.7.**) provides that the state bears any losses caused by the fault action of the state employee when exercising its authoritative power. What agency / authority is obliged to do this is not clear from this law.

**Law on Administrative and Territorial Units and Their Governance** (from 2002) declares in its **Article 5.1.3** that government employees shall be appointed through competitive process and on the ground of their knowledge, education, profession, experience, specification skills only, and their performance shall be evaluated realistically. The law prohibits groundless dismissal of an employee (**Article 14**). The same law says that government official that violated Article 14 shall be dismissed (**Article 65.3**)

Above we see provisions that mean that if the supervisor dismisses his/her employee without a reason, then he/she will be dismissed too. That means supervisors will have a great fear for firing employees on one hand, and the employees will feel safe and “untouchable”. There is no evidence of cases when those law provisions were enforced.

##### 2. Failure of law enforcement.

Even in cases where laws provide for clear and precise actions for abuse of power, those provisions are not enforced. This is due to “non-action” (“silence”) of those who are in-charge of enforcement, but also reluctance of those who witnessed the abuse to disclose it. Also there is a hesitation to seek justice by those who were affected by the wrong-doing, because of disbelief in redress.

For example, provision of the Public Service Law (16.2.3) prohibits government official to employ in the same administrative unit “family members and relatives to

positions directly subordinate to or under direct supervision of the employer”. We have seen earlier failure of enforcement of this provision (interviews in Ovorkhangai; public opinion survey).

### **3. Lack of transparency of the government.**

Although laws and regulations provide in some degree adequate procedures for government appointments, absence of transparency and accountability allows officials to disobey set rules and make self-willed decisions.

Public Service Law provides for public announcement of government vacancies (provision 17.5), but this happens very rare and in inappropriate manner, such as at the information board of the local administration only.

Another example is publication of official resumes of newly appointed government officials. They don't provide information about spouses and children of the appointee sufficient enough to show absence of conflict of interest or nepotism.

### **4. Historical and cultural factors and inexperience of the public sector as people's servant.**

Specific of social relations among Mongols (as seen in the article by D.Gankhuyag [7]) negatively affect fairness in the government service. On the other hand government service is not yet established as service to the public, but rather sees itself as authority above people.

### **5. Lack of experience and absence of culture of judicial appeals by citizens / civil society challenging abusive administrative acts.**

There are very few examples of citizen appeals. Yet, civil society should fully use newly established Administrative courts for fight against administrative abuses. In this regard few NGOs working on small number of cases will not succeed, but only large scale fight of the civil society as a whole will help to establish the justice.

## **5.0. Administrative Remedies**

One of the cardinal features of a state governed by the rule of law is that there is a legal remedy for every wrong, including those that may be committed by agents of the state. Remedies are provided through the institutions, norms and procedures created by constitutions, as well as by ordinary legislation and other normative acts. (Edwin Rekosh, Public Interest Law Initiative, Columbia University).

In considering how to strengthen these remedies, it may be useful to think of them in several categories: internal remedies, external remedies and preventive remedies.

A reason to reformulate some of the accountability notions in terms of remedies is that it shifts the focus to the individual and his or her legal rights. A focus on remedies answers the question: what are the mechanisms available to the individual in order to have some recourse after suffering an administrative abuse or which provide a means for avoiding abuses? Remedies do provide a means of holding state officials



accountable for their actions, but there are many other important means of improving accountability which do not necessarily provide individuals with remedies to specific wrongs committed against them. Examples might include elections, inter-agency oversight and auditing, internal performance reviews, user surveys, etc.

Mongolian laws provide in some extent remedies for abuses in cases of illegal discharge from government jobs. Constitution of Mongolia prohibits discrimination on the basis of ethnic origin, language, race, age, sex, social origin or status, property, occupation or post, religion, opinion, or education [Article 14 (2)] Discrimination and persecution of a person for joining a political party or other associations or for being their member are prohibited [Article 16 (10)]. And Public Administration and Finance Law (14.1.8) provides that unjustified dismissal of an employee or violation of the provision about recruitment is prohibited. Another provision of the same law (65.3) constitutes that violation of the above provision (14.1.8) shall become a ground for dismissal of the person who violated this provision. Logically it looks like the boss that fired a subordinate shall be fired in his turn. Here we see an example how vague are Mongolian laws.

### **Internal Remedies**

There are usually a variety of internal remedies available to individuals who have suffered an administrative abuse in the form of an individualized decision withholding a benefit or imposing a burden. The individual's first recourse might be to complain to the supervisor of the civil servant who committed the abuse, often through a formal, written process.

The primary difficulty with this remedy in practice is that it depends on: (1) the supervisor having a good understanding of his or her own responsibility to the general public; (2) a supervisor who is not complicit in the abusive practices of his or her subordinate; (3) a willingness to challenge the behavior of a subordinate based on a "customer" complaint; and (4) the absence of a culture of "collegiality" favoring the status quo.

Other internal remedies might include an appeal to an internal, quasi-judicial process or to a supervisory board, such as an ethics panel. Such mechanisms offer the possibility of overcoming the difficulties outlined above because they are more removed from the day-to-day collegial environment, but they are somewhat susceptible to the same drawbacks.

Since the key obstacles to the effectiveness of internal remedies relate to the attitudes and behaviors of staff, efforts to strengthen internal remedies should rely primarily on reforming personnel policies. While there is no easy recipe for doing this, some of the elements might include: (1) transparency in the appointment process (advertising of openings, publishing lists of candidates, etc.); (2) training of new employees that includes practical exercises relating to public service, ethics, the duty to disclose information, privacy, conflict of interest, confidentiality, exercise of discretion, documentation of reasons, due process, etc.; and (3) performance evaluation based on

clear job descriptions that includes criteria relating to respect for the general public, client satisfaction, etc.

Mongolia Medium-Term Civil Service Reform Strategy adopted in April 2004 provides among other following principles:

- **Public Service** – members of the Mongolian civil service recognize their primary duty is to the government and people of Mongolia above their personal interests.
- **Merit** – all appointments and career advancement of individuals should be based solely on qualification and performance.
- **Right people in the right job** – the objective of the appointment process is to have the most appropriate qualified person in each position, regardless of organizational affiliation.

The same document names reform policies set in the Public Service Law and other relevant acts:

- **Political neutrality of the civil service**
- **Transparency in personnel decisions**
- **Equal opportunity for all Mongolian citizens to enter the civil service**
- **Codification of the rights and obligations of civil servants and a code of ethics**
- **Declaration of income and property interests**
- **Prevention of nepotism**

## External Remedies

In cases of administrative abuses in the conferring of benefits and imposing of burdens through individualized decisions, there are external remedies as well, the strongest of which is judicial review. Sometimes there is a formal requirement to seek an internal remedy before a court will hear a complaint about an administrative abuse. Often, it is not within the court's purview to examine the merits of the administrative decision, but only to determine its "legality": whether the proper procedures were followed and whether the decision was consistent with the law.

Among the obstacles to the effectiveness of judicial remedies are procedural barriers, such as high court fees, as well as the complexity of the proceedings and relevant law, insufficient public understanding of how to initiate legal proceedings, lack of legal assistance for persons who can't afford to hire a lawyer and low public trust in the courts.

In case of Mongolia public trust in courts is lowest among state organizations. According to the survey of the Zorig Foundation [9] courts are most corrupt.

**Status of corruption at various organizations.**

<b>Organization</b>	<b>Heavy corrupt</b>	<b>Fairly corrupt</b>	<b>Not corrupt</b>	<b>Average index</b>
<b>Courts</b>	<b>79.0</b>	<b>18.9</b>	<b>2.1</b>	1.23
Customs (airport)	78.5	19.0	2.5	1.24
Customs (border)	79.6	16.5	4.0	1.24
<b>Prosecutors office</b>	<b>76.9</b>	<b>21.1</b>	<b>2.0</b>	1.25
Police (traffic)	71.2	26.0	2.8	1.32
Police (regular)	70.6	26.0	3.4	1.33
Tax office	67.6	27.5	5.0	1.37
Land authorities	66.8	28.4	4.9	1.38
<b>Local administration</b>	<b>63.6</b>	<b>33.0</b>	<b>3.4</b>	1.40
Political parties	63.7	32.0	4.3	1.41
State property committee	59.1	35.8	5.1	1.46
Ministries and agencies	56.8	39.1	4.1	1.47
State hospitals	55.5	38.2	6.3	1.51
Parliament	56.4	35.7	7.9	1.51
State educational organizations	55.3	37.8	6.9	1.52
Government cabinet	55.8	34.7	9.5	1.54
Debt return office	53.7	37.7	8.6	1.55
Banks	54.8	31.5	13.7	1.59
Stock exchange	50.9	33.7	15.3	1.64
Private educational organizations	48.0	37.0	15.0	1.67
Business (production)	44.9	41.7	13.5	1.69
Business (service)	45.3	39.6	15.1	1.70
Private hospitals	48.6	33.0	18.5	1.70
Office of the President	42.6	37.5	19.9	1.77

The establishment of ombudsman's offices as an alternative external remedy has helped to overcome some of the limitations of judicial remedies in many countries. The application procedures are generally informal, usually requiring nothing more than a simple letter of complaint, but the remedy is a bit "softer," since an ombudsman's office usually does not have any power of enforcement, but rather uses its standing and influence to negotiate solutions to administrative problems directly with the relevant agencies.

The actual effectiveness of ombudsman offices depends a great deal on the characteristics and reputation of the individual holding the office as well as the overall political culture. Unfortunately, this remedy tends to function least well in countries where governance problems are the most pronounced, and where administrative abuses are often at their worst.

Parliamentary oversight function can be effective remedy for administrative abuses. Currently Parliamentary oversight in general is performed occasionally and selectively. On the other hand partisanship hinders independency of the oversight, especially of the civil service.

Efforts to strengthen external remedies might include supporting the activities of NGOs which assist individuals in bringing legal complaints about administrative abuses. NGOs often have the knowledge, sophistication and access to professional expertise to make effective use of judicial remedies. Further, they usually have the resources to publicize their successes, promoting public trust in the remedy and enhancing understanding of how to make use of it.

Mongolian NGOs have enough expertise in the area of knowledge of administrative abuses, but they lack ability to challenge abuses. And to be frank they have little courage to sue officials or government agencies.

Legal aid programs, including state-funded ones, could target the provision of assistance on administrative matters.

### **Preventive Remedies**

In abuses relating to administrative actions of more general effect, the principal remedies are preventive ones: transparency, freedom of information and public participation. Holding a public hearing to allow all points of view to be expressed is another effective means for allowing public participation.

In the case of formal rule-making, transparency and public participation might include publicizing draft rules, receiving written comments from interested members of the public and holding public hearings. In the case of informal rule-making, less formal means of communicating with particular representatives of the public, such as NGOs and academic institutes, might be employed.

One possibility for strengthening this kind of transparency and public participation is to use Internet technology to more widely disseminate draft normative acts and policies. Another means of promoting transparency is to promulgate and effectively implement a good freedom of information law.

Freedom of Information Law is long waited in Mongolia. For last few years an NGO called "Globe International" and some other civil organizations are fighting hard for passage of this legislation. Public disclosures of any types are minimal. Such an important thing as publication of income declaration is discretionary even at the

highest level (members of Parliament, Cabinet ministers etc.). Useful mechanism is planned under Civil Service Reform project of the World Bank office in Mongolia - Compilation of computer data base and network of government employees. But again, when asked if this information will be available to the public, the answer was “No”.

But securing effective implementation of a freedom of information law most likely requires, in turn, the strengthening of both internal and external remedies. At the same time, transparency is also one of the means for strengthening other remedies: such as making the hiring of civil servants more transparent, making complaint mechanisms more transparent, etc. In general, the various types of administrative remedies tend to have reciprocal relationships with each other, which if strengthened, have the potential to be positively reinforcing.

One final note on remedies: abusive investigation by administrative authorities—one of the categories of abuse defined earlier—exemplifies an abuse with few remedies. When it involves the solicitation of a bribe or other forms of extortion, some of the remedies relating to corruption (an ethics complaint, a police complaint) would at least theoretically pertain. However, one of the most common forms of abuse relating to this kind of administrative action, the abuse of discretion in the decision of whether to investigate, does not generally have adequate remedies at law.

A key obstacle to finding an abuse of discretion in the decision to investigate would depend on proving an inappropriate motive on the part of the individual who ordered the investigation—i.e., was the motive discriminatory, was it based on partisan politics, etc. There would probably be a legal remedy if such proof was possible, but a motivation is a fact particularly hard to prove with legal certainty. The decision to launch an investigation is an area of discretion with few limitations.

## **6.0 Improving accountability**

### ***Sanctions***

The availability and application of sanctions for illegal or inappropriate actions and behavior uncovered through answerability constitute the other defining element of accountability. Punishment for failures and transgressions gives “teeth” to accountability, and in the popular view this is what increasing accountability and controlling abuse are all about. Most people equate sanctions with requirements, standards, and penalties embodied in laws, statutes, and regulations, but sanctions can be thought of more broadly. They include, for example, professional codes of conduct, which do not have the status of law, or incentives that are intended to reward good behavior and deter bad behavior without necessarily involving recourse to legal enforcement. One category of such incentives relates to the use of market mechanisms for performance accountability. If public service providers are required to compete for clients on the basis of publicly available information on quality and performance, accountability is enforced through the ability of clients to switch from low quality/performing providers to high quality/performing ones. The ability of service users to hold providers accountable by exercising their exit option creates incentives

for responsiveness and service quality improvement. Another category of “softer” sanctions concerns the threat of public exposure or negative publicity by investigative panels, the media, and civil society watchdog organizations. Self-policing among service providers is another example of the application of this type of sanction, where professional codes of conduct are used as the standard.

Sanctions without enforcement significantly diminish accountability. Lack of enforcement or selective enforcement undermine citizens’ confidence that government agencies are accountable and responsive, and contribute to the creation of a culture of impunity that can lead public officials to engage in corrupt practices. Enforcement mechanisms are critical, from broad legal and regulatory frameworks to internal agency monitoring systems. A lively debate regarding enforcement concerns the extent to which service delivery markets can be created such that accountability is automatically enforced when poor quality providers are eliminated as purchaser select higher quality, more entrepreneurial providers. When actors turn to the legal system as the ultimate arbiter of enforcement, problems arise where the courts are subject to political influence or control, and the rule of law is not respected.

## **6.1 Where does the exercise of accountability happen?**

Significant to thinking about accountability is identifying where the accountable and overseeing actors are located within a particular administrative system, and what their relationships with each other are. One broad categorization that is often made distinguishes between institutions and actors located within the state, and those located outside. Accountability within the state refers to state institutions that curb abuses by other public agencies and branches of government, so-called “agencies of restraint.” O’Donnell terms this category horizontal accountability: “the existence of state agencies that are legally enabled and empowered...to take actions that span from routine oversight to criminal sanctions or impeachment in relation to actions or omissions by other agents or agencies of the state that may be qualified as unlawful.” {4}.

These state agencies comprise the classic separation of powers, but also include a variety of oversight entities, such as audit offices, ombudsmen, courts of accounts, and electoral commissions. The effectiveness of these entities depends on both their autonomy, which is required to pragmatically pursue their control and sanctioning functions, and their ties to other institutions within the government. An important link is to the judicial system, which has the authority to prosecute if needed. Also, these agencies connect to accountability actors outside the state in that a) they derive some of their power from the weight of public opinion, and b) the outcomes of their inquiries, investigations, or prosecutions can influence voting, assuming citizens make retrospective assessments of government performance.

The other category concerns accountability from outside of the state. This refers to overseeing actors located outside the state that play a role in holding state actors accountable. A number of analysts call this category vertical accountability. {5} The classic expression of vertical accountability is through periodic elections, which is an imperfect instrument for punishing or rewarding governments. Besides elections, this category involves citizens, media, civil society organizations (CSOs), and the private sector in various activities that seek to articulate demands, investigate and denounce

wrongdoing, enforce standards of conduct, and provide commentary on the behavior and actions of public officials and agencies.

Three factors influence the ability of these actors to play an effective role in accountability. First, they must be connected to some degree to accountability agents within the state. For example, if journalists expose corruption via the press, they will have little impact unless the judicial system follows through with investigations and prosecutions. Second, the quality of democracy in the country influences what they are able to accomplish. If basic freedoms, such as access to information, freedom of expression and of association, are absent or circumscribed, or if criticism of government actions is treated as grounds for harassment or physical violence, then accountability from outside the state will be severely constrained. Third, the capacities of these actors must be sufficient to allow them to engage in accountability activities. The media require basic investigation and reporting skills, as well as agreed-upon reporting standards so as to be credible.<sup>{6}</sup> Civil society must be sufficiently developed in order to aggregate demands, exercise voice, take advantage of freedom-of-information and sunshine laws, and be taken seriously by public officials.

The defining elements of accountability lead to two preliminary observations. First, it appears that accountability that is initiated by civil society has, for the most part, limited enforcement and sanctions capacity. This reinforces the point made above about the need for linkages with state accountability actors. Second, the strongest accountability institutions and mechanisms lie within the state. This suggests the importance of capacity and political will on the part of public officials to use these institutions and mechanisms for the enforcement of sanctions. It also suggests the importance of having in place a supportive legal and institutional framework that Civil Society Organizations (CSO) and private sector actors can utilize to exercise accountability functions successfully.

***In this regard, it is crucially important to carefully monitor beginning stage of the functioning and fairness of the Administrative Courts in Mongolia. Civil Society Organizations and private sector should assist when necessary appeals by citizen or private enterprises.***

## **6.2 Accountability for what?**

Three general categories emerge from answering this question. The first addresses the most commonly understood notion of accountability, financial accountability. This deals with compliance with laws, rules, and regulations regarding financial control and management. The second type concerns performance; that is, the consequences of government policies, programs, and actions. Do they lead to the intended results, produce the desired benefits and results? The third category focuses on democratic/political accountability. This consists of holding leaders accountable through elections, and touches upon the administrative machinery of government that elected leaders direct to achieve public purposes. It deals with the relationship between the state and the citizen, citizen participation, equity issues, transparency and openness, responsiveness, and trust-building.

### ***Financial accountability***

Financial accountability concerns tracking and reporting on allocation, disbursement, and utilization of financial resources, using the tools of auditing, budgeting, and accounting. The operational basis for financial accountability begins with internal agency financial systems that follow uniform accounting rules and standards. Beyond individual agency boundaries, finance ministries, and in some situations planning ministries, exercise oversight and control functions regarding line ministries and other executing agencies. Since many executing agencies contract with the private sector or with nonprofit organizations, these oversight and control functions extend to cover public procurement and contracting. Legislatures pass the budget law that becomes the basis for ministry spending targets, for which they are held accountable. Obviously, a critical issue for the viable functioning of financial accountability is the institutional capacity of the various public and private entities involved. For example, municipal governments need to be able to install and employ accurate and transparent budget systems that can produce usable data for monitoring and planning purposes by both budget officials and external overseers. {7}

### ***Performance accountability***

Performance accountability refers to demonstrating and accounting for performance in light of agreed-upon performance targets. Its focus is on the services, outputs, and results of public agencies and programs. Performance accountability is linked to financial accountability in that the financial resources to be accounted for are intended to produce goods, services, and benefits for citizens, but it is distinct in that financial accountability's emphasis is on procedural compliance whereas performance accountability concentrates on results. For example, health care provider payment schemes that maximize efficiency, quality of care, equity, and consumer satisfaction demand strong financial and management information systems that can produce both financial and performance information. Performance accountability is connected to democratic/political accountability in that among the criteria for performance are responsiveness to citizens and achievement of service delivery targets that meet their needs and demands.

### ***Democratic/political accountability***

In essence, democratic/political accountability has to do with the institutions and mechanisms that seek to ensure that government delivers on electoral promises, fulfills the public trust, aggregates and represents citizens' interests, and responds to ongoing and emerging societal needs and concerns. Beyond elections, however, democratic/political accountability encompasses citizen expectations for how public officials act to formulate and implement policies, provide public goods and services, fulfill the public trust, and implement the social contract. Policy-making and service delivery relate to aggregating and representing citizens' interests, and responding to ongoing and emerging societal needs and concerns. A central concern here is the issue of equity. An important government responsibility is to remedy service provision market failures both through regulation and resource allocation. Poor communities, rural and urban, often suffer from lack of resources; even if government provides fiscal subsidies, facilities and service providers are frequently scarce or nonexistent.



### ***Increase answerability***

Answerability has two facets: reporting and justifying plans and actions. For horizontal accountability, routine answerability takes place both within individual agencies through hierarchical reporting relationships, and through interactions among the legislative, executive, and judicial branches. Most legislatures, through committees, hold hearings where agencies are required to report on the uses of their resources. For example, in parliamentary democracies, Public Accounts Committees, often chaired by members of the opposition party, exercise ex post review of agency spending to assure conformity with intended uses of funds. Constitutionally mandated audit and review entities, reporting either to the legislature or the head of state, comprise the Office of the Auditor General, and of the Comptroller General.

For external accountability between government and citizens, answerability relates directly to transparency. In mature democracies, information about available services, eligibility, service delivery procedures, and standards is publicly available. New policies, changes in existing policies and procedures, and plans for the future undergo public comment and discussion, with citizen participation actively sought out. The media and CSOs (Civil Society Organizations) provide independent analysis and commentary on these policies and plans, and help interpret government actions and decisions to citizens. {8}

Involving CSOs in monitoring performance is a potentially high-payoff approach to increasing answerability through the demand side. Service delivery surveys are an increasingly widespread mechanism that CSOs employ, often with assistance from donors.{13} Some countries have initiated court watch programs, where CSOs monitor and report on the actions of the judiciary, tracking basic indicators of due process and judicial efficiency. In countries where governments are shifting to private provision of public services, there is experimentation with delegating service quality monitoring to associations.

### ***Increase enforcement***

The application of sanctions to curb administrative abuse or illegal actions is a predominant emphasis in both the practice and theory of increasing accountability. It is reflected, for example, in the “fry the big fish” approach to fighting corruption where prosecution of prominent lawbreakers is intended to convey the message that accountability applies to everyone. Enforcement looms large in efforts to increase the effectiveness of financial and performance accountability actors and mechanisms. Enforcement measures include increases in penalties for non-compliance or malfeasance, reductions in administrative discretion (more frequent reporting), and lowered ceilings for approvals to spend funds or take actions.

The majority of enforcement mechanisms lie within government. However, external actors can play a role in accountability that moves beyond answerability. This highlights the connections between civil society actors and the agencies of restraint. As various observers have pointed out, the exposure and denouncing of wrongdoing, inequities, or inefficiencies by citizen review committees, watchdog CSOs, or the

media will not have much impact on increasing accountability unless these actions trigger some sort of sanctions. {15}

Increasing enforcement does not deal only with negative sanctions imposed by formal agencies of restraint. Another, more positive, type of sanction is referred to as incentives-based enforcement. These sanctions set expectations for behavior, and provide various incentives for meeting the expectations. Implementation takes place largely through self-policing by public sector actors. Examples include codes of conduct, internal agency review boards, employee whistleblowing programs, professional associations, and accreditation agencies. An example of codes of conduct comes from the United Kingdom where the Committee on Standards in Public Life set out seven core principles: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership.

International standards play a role in setting rules and regulations within a particular country. For example, the rules and procedures of the International Accounting Standards Committee govern financial accountability. CSOs can play a role in standard-setting too. For example, Transparency International (TI) has been influential in establishing widely accepted standards for probity and ethical behavior related to corruption, and TI's Corruption Perception Index has served as an internationally available outcome measure for application of the standards.

Citizens can have a role in determining standards. One method for such input is through service delivery surveys, which collect and report on citizens' views of service quality, availability, cost, and impacts. These surveys use a combination of focus groups, household questionnaires, key informant interviews, and community surveillance committees to gather information, and then provide feedback to service delivery providers and public policy makers, and constitute an accountability mechanism.

## **7.0 Policy options and recommendations**

### **1. Promotion of new norms and policies in public administration that include:**

- clear regulation of the rights, **responsibilities** and procedures related to the exercise of discretion powers.
- regulation of the procedures for the provision of public services, including the right to appeal.
- introduction of mechanisms to prevent conflict of interest.
- control of the selection criteria for civil servants.
- introduction of anti-corruption training at all levels of state institutions.
- Introduce competition among public service providers.

Under this public service providers will be required to compete for clients on the basis of publicly available information on quality and performance.

- Prohibit structural reforms in the government right after elections (if reforms to be introduced they shall take into effect after the office term expires).

## **2. Improvement of Legal Regulations.**

- Improve existing legislation by making provisions of the law clear and precise, so that no loopholes exist for potential abuse of power. As Prime Minister Elbegdorj said at the opening of the 2005 Spring session of the State Great Hural (Parliament) list of legislation vulnerable for abuse should be compiled.
- Improve enforcement mechanisms.
- Introduce more strict sanctions against government abuse, including fines and dismissal from the job.
- Adopt Anti-corruption law and introduce Independent Commission Against Corruption.

## **3. Transfer of government functions.**

- Contracting out of some government functions to the private and nonprofit sectors on fair competition base. For this purpose particular legislation should be developed.

## **4. Transparency.**

- Income disclosures for all high and mid-level government officials should be publicly available.
- Increase of transparency of all government activities, including appointment and recruitment for government jobs, issuing of licenses, procurement information.
- Transparency of all procedures related to public service.
- Obligatory requirement for all public offices to display openly all information related to rendering related services to citizens. (Posters prepared by NGOs and assisting citizens on how to deal with government are available in great numbers, but unfortunately government agencies are hesitant to display them in their offices. NGOs need better cooperation in this with the government).
- Introduction of e-government, online procedures for civil applications.  
E-government linked to internet access for increased transparency of the government.  
All government information (except state secrecy) should be placed on Internet.

Online procedures for civil applications, including obtaining of licenses etc.

## **5. Engaging citizens in policy-making**

### **■ Information, Consultation and Public Participation**

Strengthening relations with citizens is a sound investment in better policy-making and a core element of good governance. It allows government to tap new sources of policy-relevant ideas, information and resources when making decisions.

Equally important, it contributes to building public trust in government, raising the quality of democracy and strengthening civic capacity. Such efforts help strengthen representative democracy, in which parliaments play a central role.

#### ***Concrete Steps:***

In strengthening their relations with citizens, governments must ensure that:

- information is complete, objective, reliable, relevant, easy to find and to understand;
- consultation has clear goals and rules defining the limits of the exercise and government's obligation to account for its use of citizens' input;
- participation provides sufficient time and flexibility to allow for the emergence of new ideas and proposals by citizens, as well as mechanisms for their integration into government policy-making processes.

## **6. Increase access to information.**

- Create of the necessary technical, organizational and legal premises for efficient access to information and of the administrative service-provision.
- Adoption of international standard (model) Freedom of Information law /Article 19/ (for government – Public Interest Disclosure Act, including Whistleblower legislation).

## **7. Develop investigative journalism**

- improve investigative journalism skills of media to the level of becoming effective watch-dog and pressure agent in holding government accountable.
- Remove harsh provisions from the Criminal and Civil Codes that impose strict punishments for defamation.

## **8. Parliamentary and State Audit oversight over executive branch.**

- Instead of random checks, introduce continuous oversight over the civil service and the executive branch by the parliament and State Audit.

## **9, Monitoring policy**

Promote monitoring of government by the civil society, including monitoring of the government performance, functioning of Administrative courts.

#### **10. Development of think tanks**

- Analyze government activities using civil society think tanks, both issuing comments and critics to government abuses and developing alternatives for appropriate remedies.

# # #

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## Appendices

### Appendix 1

In 2003 Citizen Information and Service center of the Ovorkhangai aimag's (province)

Citizen's Representative Hural (local parliament) conducted survey on corruption. Survey was conducted in soums (administrative units) Arvaikheer, Uyanga, Nariinteel, Burd, Bayan-Ondor, Yosonzuil, Hujirt and Hairhandulaan of the Ovorkhangai aimag. Total of 285 respondents of different age, sex, education and employment from urban and rural area participated in the survey. Data is given below (statistical errors and variations in transcription were left unchanged as they appear in the original document).

Frequency of situations when you had to bribe an official

Always	32	11,2%
Sometimes	110	38.5%
No answer	20	7%
No	123	43.2

Most corrupt organization

Aimag governor's office	20	7%
Soum governor's office	9	3%
Land authorities	28	9%
Banks	31	10.8
Tax office	4	1.4%
State inspectors	31	10.8%
State fund department	24	8.4%
Courts	92	32..2%
Prosecutors	58	20..3%
Police	129	42.2%
Hospitals	65	22.8%
Schools	39	13.8

Causes of corruption

Decline of morality	57	20%
Decline of living standard	61	21.4%
Weakness of law enforcement	78	27.3%
Officials are not held responsible	81	28.4%

Who's fault is greater in corruption

Giver and taker	150	52,6%
Taker	82	28.7%
Giver	14	4.9%
Mediator	9	3.15%
Don't know	30	11.6%

Do you believe that corruption will disappear?

Don't believe at all	118	41.8%
Have little confidence	147	51.5%
Yes, I believe	20	7%

Do you agree that improved information, openness and accountability will lead to less corruption?

Yes	185	65.8%
No	84	29.4%

**Is corruption related to politics?**

<b>Yes</b>	<b>87</b>	<b>30.5%</b>
No	62	21.7%
Somewhat	44	15.4%
Mostly	45	15.7%
Don't know	31	10.8%

Who is most vulnerable to corruption?

Those who have power	97	34%
High ranking officials	35	12.3%
Officials in-charge of certain issues	69	24.2%
Politicians	17	5.9%

Who are the bribe givers?

Politicians	40	14%
Businessmen	122	42.8%
Government employees	40	14%
Pensioners	29	10.3%
Everyone	54	18.9%

In your opinion, how corruption should be fought against most efficiently?

1. Open information 25 8.7%
2. Increase salaries and benefits for government employees 40 14%
3. Renew legislation 7 2.4%
4. Nothing will help 15 5.3%
5. Fight hard with school teachers and medical workers who treat people differently depending on people's wealth 2.8%
6. Improve oversight and control 6 2.2%

Your occupation

1. Government	39
2. Educational organization	31
3. State enterprise, public company	10
4. Health organization	14
5. Private company, small trade	30
6. Military, police, courts, procurator	11



7. NGO	20
8. Student	18
9. Pensioner	20
10. Unemployed	33
11. Herder	11
12. Other	48

#### Your education

1. University / college	87
2. Professional school	89
3. Senior high school	58
4. Junior high school	46
5. Primary school	5

#### Residency

1. Aimag center	100
2. Soum center	174
3. Rural	11

## Appendix 2

Corruption survey was conducted in spring of 2004 by the NGO “Zorig Foundation”. Ulaanbaatar city districts, government ministries and agencies, local governments in 16 aimags were covered, 1000 people including respondents and focus groups.

**Open ended question about what is corruption was answered as follows:**

<b>Thing that helps to speed up business</b>	<b>13.5%</b>
<b>Abuse of official position, bureaucracy</b>	<b>13.2%</b>
Bad for the society, illegal activity	11.8%
Bribery	9.1%
Corruption is widespread in the society	8.8%
It simply exists	7.1%
It should not exist, should be fought against	4.9%
It occurred because of weak rule of law, and decline of the living standard	2.6%
Depends on morality	2.1%
Don't know	27.0%

Focus groups revealed interesting stand points on corruption. Here is example of two aimags:

Hovd aimag	Dornod aimag
<ul style="list-style-type: none"> <li>• “I think, it means to give money to somebody. To give things to bosses in order to get your business done”</li> <li>• “Illegal revenue, solicitation of benefits from others”</li> </ul> <p>(From interview with mixed group)</p> <ul style="list-style-type: none"> <li>• “It occurs when somebody receives a prize from others. When somebody receives payment in addition to the salary for doing an act that he or she is ordinarily required to do – it is corruption”</li> <li>• “A form of distorting of law in some way”</li> <li>• “Abuse of law in order to make yourself pricy”</li> <li>• “It is related to human need that has no limits. Abuse of power”</li> </ul> <p>(From interview with group consisting of teachers, bag (smallest administrative unit))</p>	<ul style="list-style-type: none"> <li>• “Under corruption people understand back doors. This word is more commonly used that corruption”</li> <li>• “To be considered corruption a large amount should be given, I guess”</li> <li>• “Can't really tell what is corruption. Our people don't understand it clearly”</li> <li>• “I understand corruption as back door, giving and taking of money”</li> <li>• “Unlawful satisfaction of own needs using public power, such as putting somebody into hospital”</li> <li>• “Government employees are taking side of their acquaintances or of people with money”</li> </ul> <p>(From interview with mixed group)</p>

governors, workers)	administrative	
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Status of corruption at various organizations.

<b>Organization</b>	<b>Heavy corrupt</b>	<b>Fairly corrupt</b>	<b>Not corrupt</b>	<b>Average index</b>
Courts	79.0	18.9	2.1	1.23
Customs (airport)	78.5	19.0	2.5	1.24
Customs (border)	79.6	16.5	4.0	1.24
Prosecutors office	76.9	21.1	2.0	1.25
Police (traffic)	71.2	26.0	2.8	1.32
Police (regular)	70.6	26.0	3.4	1.33
Tax office	67.6	27.5	5.0	1.37
Land authorities	66.8	28.4	4.9	1.38
<b>Local administration</b>	<b>63.6</b>	<b>33.0</b>	<b>3.4</b>	<b>1.40</b>
Political parties	63.7	32.0	4.3	1.41
State property committee	59.1	35.8	5.1	1.46
Ministries and agencies	56.8	39.1	4.1	1.47
State hospitals	55.5	38.2	6.3	1.51
Parliament	56.4	35.7	7.9	1.51
State educational organizations	55.3	37.8	6.9	1.52
Government cabinet	55.8	34.7	9.5	1.54
Debt return office	53.7	37.7	8.6	1.55
Banks	54.8	31.5	13.7	1.59
Stock exchange	50.9	33.7	15.3	1.64
Private educational organizations	48.0	37.0	15.0	1.67
Business (production)	44.9	41.7	13.5	1.69
Business (service)	45.3	39.6	15.1	1.70
Private hospitals	48.6	33.0	18.5	1.70
Office of the President	42.6	37.5	19.9	1.77

**Corruption leads to the situation when business is done extra legally. For instance, at our organization two positions were granted to unqualified people who gave bribes, but not to those qualified. Legally there should be fair competition among best candidates for jobs. Now, best people and assigned jobs both suffer (from group interview in Hovd).**

### Evaluation of spreading of corruption

	Very common /1/	Common/2 /	rare /3/	Not common at all /4/	Average index
Invite officials for meals and give small gifts	56.9	37.1	5.6	0.4	1.50
<b>Officials provide jobs for relatives</b>	<b>58.7</b>	<b>33.3</b>	<b>6.7</b>	<b>1.3</b>	<b>1.51</b>
<b>Officials use their position for private gain</b>	<b>53.4</b>	<b>38.3</b>	<b>7.4</b>	<b>1.0</b>	<b>1.56</b>
Give officials things of big value	29.9	45.9	23.1	1.1	1.95
Give officials big amount of money	32.1	37.0	29.2	1.8	2.01
Government officials engage with criminals	25.1	28.7	40.6	5.6	2.27

“Last year one of my brothers needed a surgical operation and we went to the hospital. Doctor there said that there are no beds vacant. Among relatives we collected 40,000 togros (about \$40) and gave it to the doctor. Only after that my brother underwent the surgery. After the surgery we gave gifts to every surgeon and nurse since this was a custom.

Main reasons why corruption will increase or stay the same in the next two years

<b>Common thing</b>	<b>179</b>	<b>25%</b>
<b>Laws are not enforced, no fight against corruption</b>	<b>147</b>	<b>20%</b>
If poverty will remain	110	15%
Because there is tendency of increasing	63	9%
Business stalls	54	7%
Officials don't change	53	7%
Stereotype has rooted	39	5%
Not certain how the society will change	24	3%
Not enough training and advertising on anti-corruption	22	3%
Corruption is a main business tool	22	3%
Elections will remain corrupt	16	2%
	729	100%

### **Conclusions derived from opinion surveys.**

- Opinion surveys show that corruption in Mongolia is widespread and common. Respondents of the opinion poll said that corruption in the

country is widespread. Those who participated in the focus group stressed that corruption is becoming everyday routine and standard relation between people. They say that without learning those standards it is very difficult to conduct everyday life and business.

- Public understanding of corruption is not uniform, contradictory. At the level of average thinking understanding of corruption and about its forms and occurrences are very weak. General understanding of corruption is that this is a way of fixing things via bribing officials. It should be noted that also some positive attitude towards corruption exists. Responses that bribes help to foster an issue and reduce red tape were among high percentage ones. This is an alarming tendency.
- During our survey, Government institutions that were named most corrupt in the past surveys (courts, police, prosecutors office, customs, tax office and land office), remained in their previous positions. Even worse, corruption is prospering more than ever in those institutions.
- Among causes of corruption most frequently named are following: low living standard of the population, low income (specially of the government officials), weak legal environment, discrepancy between official power and responsibility. In addition to above causes, during focus group discussions bureaucratic red tape was named as one of major reasons for corrupt conduct. Bureaucracy in the government offices became one of working styles and specifics for government officials.
- People stress many negative consequences of corruption, but also complain that there are no legal and judicial remedies (restoration of dignity, reimbursement for damage) for those who were affected by corruption. According to survey, corruption always violates human rights and threatens liberties. Also it leads to deterioration of social justice, rule of law and morality. At the same time corruption causes material damage to citizen and the country, adds to the increase of social inequality, to the gap between rich and poor, rockets poverty rate.
- Respondents say that rate of solving corruption cases are low in the country due to the fact that authorities and officials themselves are involved, and on the other hand they interfere with investigations. On the top of that giving and taking of bribes became common practice in the society.
- People's evaluation of the fight against corruption by governmental and non-governmental organizations is very low. This is a sign that society accepts corruption and became used to it. Another issue tested by the survey is the most effective organization to deal with corruption. Respondents see as the most suitable independent body with special powers, not the government, nor the NGO.
- People are critical about legal regulations on anti-corruption. In their view no improvements occurred in this area since 1999. One of reasons of such negative evaluation might be poor legal education of the public on the corruption.
- More that 80% of survey respondents said that corruption will remain at the current state or even worsen in the future.

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